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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,180	07/14/2000	HIROTOSHI ISHIDA	192697US0PCT	1244

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EXAMINER
WONG, LESLIE A

ART UNIT	PAPER NUMBER
1761	23

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-2B

Office Action Summary

Application No.	Applicant(s)
09/581,180	Ishida et al.
Examiner	**Art Unit**
Leslie Wong	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Sep 19, 2002*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-3, 5, 7, and 9-19* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3, 5, 7, and 9-19* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 7, and 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muhammad et al.

Muhammad et al disclose a sweetener composition comprising aspartame and acesulfame K in the percents claimed.

The claims appear to differ as to the specific particle size.

In the absence of a showing to the contrary, the particle size is seen to be no more than obvious to that of Muhammad et al as the same components are utilized, and particle size is a matter of choice and well-within the skill of the art. At most the particle size is seen to be no more than optimization, see In re Boesch 205 USPQ 215.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the claimed particle size because the choice is well-within the skill of the art and dictated by the final product desired.

Granulated table top sweeteners are notoriously well-known and conventional in the art. The form of delivery (e.g. granulated, liquid, etc) is merely a matter of choice and well-within the skill of the art.

In the absence of a showing to the contrary, the dissolution rate is seen to be no more than obvious to that of Muhammad et al as the same components are utilized.

With respect to claims 13-15, the recitation that the product is made by a new process, if the process were indeed new and patentable, does not render an otherwise unpatentable product new and patentable. It is pointed out that the claims are product claims and not process claims. The product must stand on its own invention, independently of the process of producing same. See In re Marosi, 218 USPQ 195; In re Thorpe, 227 USPQ 964; Ex parte Jungfer, 18 USPQ 2nd 1976.

The declaration under 37 CFR 1.132 filed March 19, 2002 is insufficient to overcome the rejection of claims 1-3, 5, 7, and 9-19 based upon Muhammad et al as set forth in the previous Office actions for the following reasons.

1) Applicant does not provide statistical analysis of the data to support the conclusions.

2) The results supplied do not seem to support unexpected results for the broad range that is claimed. Applicant claims "about 1,400 μm or less", but it is not seen where the data supports unexpected results for this range. For example, at 5% ACE-K at 500 to 1,400 μm and at to 100 μm the data appears similar.

3) It is not clear why the data for 90% ACE-K is combined and why only some of the granules are "non-sieved".

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known

components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday.

The fax number for this Group is (703) 872-9310 for non-final responses and (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Leslie Wong

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
September 26, 2002